BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SUSAN KRAUSE	)	
Claimant	)	
VS.	)	
	)	Docket No. 255,668
FRITO-LAY, INC.	)	
Respondent	)	
AND	)	
	)	
CNA INSURANCE CO./RSKCO	)	
Insurance Carrier	)	

ORDER

Respondent appeals the July 31, 2000, Order of Administrative Law Judge Bryce D. Benedict.

ISSUES

Claimant was awarded benefits after the Administrative Law Judge found claimant had proven that she suffered accidental injury arising out of and in the course of her employment with respondent and had provided timely notice of accident pursuant to K.S.A. 44-520. Those are the issues presented to the Board for determination.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant, a 19½-year employee with respondent, worked as a packer, which involved packing chips, lifting boxes, cleaning the "Allen", sweeping the floor and "palletizing" on the floor.

In the summer of 1999, claimant was also assigned additional duties which included stocking labels and tape. Claimant described the label boxes as weighing approximately 20 to 25 pounds and the tape boxes as weighing approximately 37 pounds. Claimant did not do the stocking of tape and label jobs daily, but did perform these duties several hours per week.

Claimant testified that she began experiencing problems with her back in the summer of 1999, after beginning this new job. Claimant further testified that her back condition continued to worsen until, by December 1999, she was forced to go to a doctor.

Claimant first went to William R. Lentz, M.D., on December 6, 1999. She advised Dr. Lentz of her problems and further advised him that she felt this condition may be related to her employment. Claimant, however, did not advise respondent of her workers' compensation claim until January 7, 2000. Respondent contends claimant has failed to provide notice of an accident which respondent alleges began in the summer of 1999 and, at the very latest, occurred as of the December 6, 1999, doctor's appointment.

Respondent further contends claimant failed to prove that she suffered accidental injury arising out of and in the course of her employment. However, respondent's contentions are not supported by the record. First, claimant is the only witness to testify about her accident. There is no one from respondent who denies that claimant performed the job duties she described. There is further no one from respondent to testify that claimant did not develop the symptoms from her job duties between the summer of 1999 and her last day worked, March 23, 2000. The Appeals Board, therefore, finds that claimant's testimony is both credible and uncontradicted, and supports her contention that she suffered accidental injury arising out of and in the course of her employment on the date alleged.

In addition, respondent's position about notice is not supported by the record. When dealing with the complexities of a repetitive use injury, the Kansas Supreme Court, in Treaster v. Dillon Companies, Inc., 267 Kan. 610, 987 P.2d 325 (1999), stated that the process would be simplified and made more certain if the date from which the compensation flows is the last date that a claimant performs services or work for his or her employer or is unable to continue a particular job and moves to an accommodated position.

Here, claimant continued performing her regular job duties, in what appears to be a classic microtrauma low back case, through March 23, 2000. The Appeals Board, therefore, finds that an appropriate date of accident in this instance would be March 23, 2000, the last date claimant performed services or work for her employer. As claimant advised respondent of her ongoing problems and her contention that they were related to her employment in January 2000, this would be well before any notice time limits under K.S.A. 44-520 would have expired.

The Appeals Board, therefore, finds that claimant provided timely notice of accident under K.S.A. 44-520.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated July 31, 2000, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 2000.

BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS
John David Jurcyk, Lenexa, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director